

**DELL**  
**PROGRAM AGREEMENT**

**1. Purpose.**

This Program Agreement ("Agreement") establishes terms and conditions, not otherwise enumerated in Dell's GSA FSS Contract # GS-35F-4076D and this GSA Blanket Purchase Agreement #N00104-02-A-ZE83, applicable to the Government's purchase of the Microsoft software licenses listed on the BPA Pricing Schedule from Dell. This Agreement, which incorporates the relevant terms and conditions of the Dell / Microsoft Enterprise Agreement, gives users of this BPA that wish to license one or more of Microsoft's platform products across their enterprise the means to ensure that their entire enterprise will be licensed.

**2. Definitions**

In this agreement, "you" means the Department of Defense that has entered into this agreement with Dell Marketing L.P., and "we" or "us" means Dell Marketing L.P. who is entering into an agreement with MS to provide the products and rights described in this agreement to the DoD.

"additional product" means any product other than an enterprise product for which you choose to order license(s) under an enrollment for an agency affiliate;

"agency affiliate" means (a) the Department of Defense, and (b) with regard to us, any legal entity that we own, that owns us, or that is under common ownership with us;

"agency" means the Department of Defense;

"available" means, with respect to a product, that we have made licenses for that product available for ordering under the Enterprise Agreement program;

"enrolled affiliate" means an entity, either an agency or an agency affiliate, for which you order licenses under an enrollment under this agreement;

"enrollment" means the document that you submit under this agreement to sign up an enrolled affiliate for the Enterprise Agreement program and make an initial selection of products for an enrolled affiliate;

"enterprise" means the enrolled affiliate and its agency affiliates identified on an enrollment to include in its enterprise;

"enterprise product" means any product that we designate as an enterprise product and that an enrolled affiliate chooses to license under an enrollment (enterprise products may only be licensed on an enterprise-wide basis under the Enterprise Agreement program);

"government contract" means the Department of Defense Enterprise Software Agreement (ESA);

"License" means anyone of those offerings identified in the Product List (including standard licenses, and upgrades for desktop operating systems) that provides the right to run the version of the product for which it is ordered ;

"License Agreement Product Use Rights" means the specific rights Microsoft grants enrolled affiliates for each product it licenses and the general license agreement terms that apply to such products; "L&SA" means a License and Software Assurance for any product ordered;

"order" means an order on a form we provide. An enrollment serves as your initial order on behalf of an enrolled affiliate;

"product" means any product available to license as described on the Product List;

"Product List" means, with respect to any licensing program, the statement published by Microsoft from time to time that identifies the products that are or may be made available under each of the volume licensing programs, and identifies which products are available to you and any product-specific conditions or limitations on the acquisition of licenses for the product;

"qualified desktop" means any personal desktop computer, portable computer, workstation or similar device that is used by or for the benefit of an enrolled affiliate or any agency affiliate included in its enterprise and that meets the minimum requirements for running any of the enterprise products. Qualified desktops do not include: (i) any computer that is designated as a server and not used as a personal computer, (ii) any system dedicated to run ONLY line-of-business software (e.g., an accounting or bookkeeping program used by an accountant, or a computer-aided design program used by an engineer or architect); or (iii) any system running an embedded operating system (e.g. Windows 9.x for embedded, Windows XP embedded);

"renewal order" means the order that you submit at the beginning of any option term to renew Software Assurance coverage for products previously ordered for an enrolled affiliate under an enrollment;

"run" or "use" means to copy, install, use, access, display, run other otherwise interact with;

"Software Assurance" means, for any underlying licensed product for which it is ordered, the right to upgrade to, and run, the latest version of that product that we make available during the covered period;

"Standard Configuration" means the configuration with the following Enterprise products selected: 1) Operating System Upgrade; 2) Office Professional; 3) Windows, Exchange, and SMS CAL;

"Enhanced Configuration" means the configuration with the following Enterprise products selected: 1) Operating System Upgrade; 2) Office Professional; 3) Core CAL;

"Enhanced Configuration with SQL" means the configuration with the following Enterprise products selected: 1) Operating System Upgrade; 2) Office Professional; 3) Core CAL and SQL CAL;

"Volume Level" means the number of qualified desktops as specified in Paragraph 3 below;

"Open Enrollment Period" means the number of qualified desktops specified in Attachment A from which product pricing levels are determined as set forth in this agreement;

"Product Configuration" means the Standard Configuration, Enhanced Configuration or Enhanced Configuration with SQL" required by the DoD ESI and listed on the table.

### 3. Volume Forecast

The volume forecast for this agreement is:

Fiscal Year	DoD ESI Forecast
FY-03	New Enrollments: 180,699 qualified desktops
	Renewal enrollments: 348,603 qualified desktops

### 4. Determination of Prices

For enrollments signed during the Open Enrollment Period, the following shall apply:

- The Year 1 per-desktop price for each Product Configuration covered by such enrollment, for each qualified desktop irrespective of the number of qualified desktops under such enrollment, shall be determined according to the Forecasted Volume Level identified above. Once established, price levels may be adjusted from time to time based on the actual license purchase volume.

- The Year 1 per-desktop price for each Product Configuration covered by each enrollment, for each desktop irrespective of the number of qualified desktops under such enrollment, shall be re-leveled according to the actual Volume Level of total enrollments that was achieved during the Open Enrollment Period. In the actual Volume Level at the expiration of the Open Enrollment Period is different from your Forecasted volume Level, we will adjust your price level up or down as appropriate, i.e. (i) the difference between the price level in Attachment A and the Forecasted Volume Level and the price level for the actual Volume Level will be split between the remaining two years of the affected enrollment, and (ii) the price level for the remaining two years of the enrollment will be adjusted to reflect the actual Volume Level.
- The Year 2 and Year 3 per-desktop prices are based on the actual aggregate Volume Level for each product configuration on the date which is 30 days prior to the 2<sup>nd</sup> or 3<sup>rd</sup> anniversary date of enrollment, as appropriate. For example:

The year 1 Forecasted Volume for new enrollments is 100,000 to 199,999 qualified desktops, resulting in a Standard Desktop price of \$230.50. The actual number of qualified enrollments enrolled during the Open Enrollment Period is between 200,000 and 299,999 resulting in a Standard Desktop price. The price for years 2 and 3 is adjusted to reflect the Volume Level and the difference between the per-desktop price for the forecasted Volume Level and the actual Volume Level as an adjustment to the year 2 and year 3 payments for a total year 2 and year 3 price of \$227.50:

	Qty of Enrollments	Year 1	Year 2	Year 3
Forecasted volume price for Standard Desktop Configuration	Between 100,000 and 199,999 desktops	\$230.50	\$230.50	\$230.50
Actual volume price for Standard Desktop 11 months after enrollment 1 <sup>st</sup> anniversary date	Between 200,000 to 299,999 desktops	\$230.50	\$227.50	\$227.50

##### 5. Enrollments signed after the Offer Deadline

The Year 1, Year 2 and Year 3 per-desktop prices, respectively, for each Product Configuration on each qualified Desktop shall be determined based upon the then-current published Microsoft prices for each such Product Configuration which corresponds to the applicable Volume Level.

##### 6. For aggregate orders necessary to meet the 250 qualified desktop minimum enrollment requirements:

For those orders that have been aggregated by the DoD ESI Working Group to meet the 250 qualified minimum enrollment requirement the following information is required:

- Enterprise Enrollments for each Product Configuration shall be reported on a quarterly basis
- Enterprise Enrollment for each Product Configuration shall be submitted with purchase order detail for all orders that make up the 250 qualified desktop minimum requirement.

Upon DoD ESI Working Group's acceptance of aggregate orders, the enrolled affiliate has the following rights:

- The enrolled affiliate may run one copy of the latest version (or any prior version) of each product configuration, on each qualified desktop as of the submission of their order to the DoD ESI Working Group.
- This right shall not exceed 90 days, except by written authorization from Microsoft.
- At the end of each quarter if the aggregate enrollment does not meet the 250 minimum order requirement for any and/or all product configuration orders then DoD ESI Working group has one of two options:
  1. Request Dell/Microsoft to extend the 90 day temporary license grant, or
  2. Request Dell/Microsoft to accept the order at an acceptable quantity less than 250 for that particular Product Configuration enrollment.

**7. How to order enterprise product licenses.**

**a. *Placing the initial order.*** You must submit an initial order for the enterprise products you select for each enrolled affiliate on an enrollment. Except as provided in the following paragraph, the order must be for L&SA for all enterprise products.

When are you eligible to order for an enrolled affiliate only Software Assurance for an enterprise product? You may order Software Assurance for an enrolled affiliate for the enterprise products it selects without the need to simultaneously order a License if the enrolled affiliate or any of the agency affiliates in its enterprise have obtained perpetual licenses for that product on an enterprise-wide basis under a previous "Enterprise Enrollment" (defined below), and the new enrollment becomes effective no later than the day following the date of expiration of that "Enterprise Enrollment". The Software Assurance order must be for the number of qualified desktops covered as of the expiration of that "Enterprise Enrollment." For all other qualified desktops included in an enrollment submitted under this agreement, you must order USA for the enrolled affiliate.

The term "Enterprise Enrollment," as used in this section, means (i) an Enterprise Agreement under Microsoft's Government Integrator Agreement program or third-party vendor's GSA Schedule, (ii) another agreement for Microsoft products with a "get current, stay current" component, or (iii) any enterprise subscription enrollment entered into under a separate Microsoft Enterprise Subscription Agreement; or (iv) any other enrollment submitted under the Microsoft Enterprise Agreement identified on the cover page.

Exceptions to above eligibility requirements:

- Between June 11, 2002 and July 31, 2002 you may order Software Assurance for an enrolled affiliate for the Product Configuration it selects without the need to simultaneously order a License if the enrolled affiliate or any of the agency affiliates in its enterprise have obtained (i) a perpetual license for that product, and (ii) are current (as identified by the Product Use Rights) as of July 31, 2002 for all components of the applicable Product Configuration being enrolled in.
- After July 31, 2002 you may order Software Assurance for an enrolled affiliate for the Product Configurations it selects without the need to simultaneously order a license if the enrolled affiliate or any of the agency affiliates in its enterprise have obtained (i) a perpetual license for that product, and (ii) are currently enrolled in Software Assurance or Upgrade Advantage for all components of the applicable Product Configuration being enrolled in.
- The renewal enrollment becomes effective no later than the day following the date of expiration of that Software Assurance for all components of the applicable Product Configuration being enrolled in.
- For proof of eligibility you will provide to us on behalf of enrolled affiliate, written notification from the Contracting Officer stating the enrolled affiliate is properly licensed and eligible to enroll under the applicable Product Configuration renewal.

**b. *Adding new enterprise products.*** You may only add new enterprise products for an enrolled affiliate by entering into a new enrollment.

**c. *Placing annual "true up" orders to account for additional desktops.*** You must determine for each enrolled affiliate the current number of qualified desktops in its enterprise: (i) at each anniversary of the effective date of the enrollment (including anniversaries during any renewal); and, (ii) at the expiration or early termination of the enrollment.

- **If the desktop count has increased.** If the number of qualified desktops has increased, you must submit an order for L&SA covering those additional desktops. You must place the order within 15 days following the anniversary of the enrollment effective date, expiration or termination.

- **If the desktop count has not increased.** If the number has not increased, you must submit an update statement confirming this fact on the form we provide within that 15-day period.

**d. Reorganizations, Consolidations, and Privatizations.** If the number of qualified desktops in an enterprise changes by more than ten percent as a result of a reorganization, consolidation, or privatization, we will work with you in good faith to determine how to accommodate its changed circumstances in the context of this agreement. If an enrolled affiliate consolidates with a US Government customer with an existing "Enterprise Enrollment," we will work with you in good faith to accommodate its changed circumstances in the context of this agreement.

**e. Reporting country of use.** On each order (initial, subsequent, true up or renewal), you must report to us:

- For enterprise products - the countries where the enrolled affiliate's qualified desktops covered by that order are located and the approximate number of such qualified desktops in each of those countries, and
- For additional products - the countries where the enrolled affiliate or its agency affiliates run those copies of the additional products covered by that order and the approximate number of copies run in each of those countries.

This information is for our internal use only and does not change the prices we provide for the products licensed under this agreement.

## **8. How to order additional product licenses.**

**a. Placing the initial order.** You must submit an initial order for the additional products each enrolled affiliate has selected, if any, on an enrollment you submit for such enrolled affiliate. Except as provided in the following paragraph, the order must be for L&SA for all copies of those additional products.

**When are you eligible to order for an enrolled affiliate only Software Assurance for an additional product?** You may order for an enrolled affiliate Software Assurance for additional products it selects without the need to simultaneously order a License if the enrolled affiliate or any of the affiliates it includes in its enterprise has obtained perpetual licenses for those products with Upgrade Advantage, Software Assurance or any similar upgrade protection, and the new enrollment becomes effective no later than one day following the expiration of that upgrade protection. The order may be for up to the number of copies covered by such upgrade protection. You may also order for an enrolled affiliate Software Assurance alone in any other circumstances expressly permitted in the Product List. For all other copies included in an enrollment submitted under this agreement, you must order for the enrolled affiliate L&SA.

**b. Adding new additional products not previously ordered.** Each enrolled affiliate may, during the remainder of the applicable initial enrollment or renewal term, run new additional products under the enrollment you submit on its behalf that were not part of the initial order. To do so, you must order for the enrolled affiliate L&SA in the month in which the product is first run, covering all copies of that product run as of the date of the order. For any additional copies of that product run after the date of that order, you must submit orders for the enrolled affiliate as described in subsection 8(c) (Placing annual "true up" orders to account for additional copies) below.

**c. Placing annual "true up" orders to account for additional copies.** Each enrolled affiliate may, during the remainder of the applicable initial enrollment or renewal term, run additional copies of those additional products it (or you on its behalf) previously ordered under subsections (a) and (b), provided that the enrolled affiliate (or you on its behalf) places a true up order for L&SA for those additional copies. The enrolled affiliate (or you on its behalf) must submit an order within 15 days after the next anniversary of the effective date of the enrollment (including anniversaries occurring during any renewal) following the date on which those copies were first run. For additional copies first run in the year in which an enrollment expires or is terminated, the enrolled affiliate must submit an order within 15 days following the expiration or termination date.

**d. Update statements.** You must submit for each enrolled affiliate an update statement within 15 days following each anniversary of the effective date of the enrollment you submit on its behalf, and after expiration or termination of such enrollment, on a form we provide, unless that enrolled affiliate (i) is running only enterprise

products under its enrollment, and (ii) you are not otherwise required to submit an update statement under subsection 8(c) (Placing "true up" orders to account for additional desktops) above.

**9. How to confirm orders**

Microsoft will publish information about orders placed by you for each enrolled affiliate, including an electronic confirmation of each order, on a secure site on the World Wide Web at <https://licensing.microsoft.com> or a successor site that Microsoft identifies.

**10. License grant – what your enrolled affiliates are licensed to run.**

Upon our acceptance of your enrollment for an enrolled affiliate, the enrolled affiliate has the following rights during the term of its enrollment.

- **For enterprise products.** The enrolled affiliate may run one copy of the latest version (or any prior version) of each enterprise product, on each qualified desktop. By including agency affiliates in its enterprise, the enrolled affiliate sublicenses this right to each of them subject to the terms of this agreement.
- **For additional products.** The enrolled affiliate may run the number of copies of each additional product ordered in the latest version (or any prior version). If an agency affiliate included in any enrolled affiliate's enterprise runs any copies of an additional product under this agreement, those copies are sublicensed from that enrolled affiliate subject to the terms of this agreement.

The enrolled affiliate's right to run any product licensed under an enrollment is temporary until:

- (i) you have paid all installments of the price for that product license and the applicable initial enrollment or renewal term during which that product license was ordered has expired or been renewed, or
- (ii) the enrolled affiliate is otherwise entitled to perpetual licenses upon early termination as provided in subsection 14(d) (Effect of termination or expiration).

Thereafter, the enrolled affiliate will have perpetual licenses to run the latest version available as of such date of expiration, renewal or termination (or any prior version), of each enterprise product in a number of copies equal to the total number of qualified desktops covered by the enrollment; and each additional product in the number of copies ordered during the applicable initial enrollment term or renewal term. In the case of early termination as provided in subsection 14(c) (Termination of an enrollment), if you choose only to pay amounts due and payable as of the termination date, then the enrolled affiliate will instead have perpetual licenses for the number of copies specified in subsection 14(d) (Effect of termination or expiration).

Any perpetual licenses received through Software Assurance supersede and replace the underlying perpetual licenses for which that Software Assurance coverage was ordered. All perpetual licenses acquired under this agreement remain subject to the terms of this agreement and the applicable License Agreement/Product Use Rights.

This agreement, the applicable enrollment, the enrolled affiliate's order confirmation described in section 9 (How to confirm orders) above, enrolled affiliate's order to you under the government contract in a form acceptable to you, and any documentation evidencing transfers of licenses as described in the applicable License Agreement/Product Use Rights, together with proof of payment, will be the enrolled affiliate's evidence of all licenses ordered by you under an enrollment submitted on behalf of the enrolled affiliate.

**11. How to know what product use rights apply.**

Except as otherwise described in the License Agreement/Product Use Rights, an enrolled affiliate's use of any product that you order for it is governed by License Agreement/Product Use Rights specific to each product and version. You will provide each enrolled affiliate with a copy of the applicable License Agreement/Product Use Rights or we will make them available either by publication on the World Wide Web at a site we identify or by some other reasonable means. You acknowledge that you and the enrolled affiliates have access to the World Wide Web. Microsoft does not transfer any ownership rights in any licensed product, and we reserve all rights not expressly granted.

**12. Software Assurance Membership.**

Throughout the term of an enrollment (including any renewal), each enrolled affiliate automatically qualifies as a member of Microsoft's Software Assurance Membership program. Membership may entitle the enrolled affiliates to special benefits. For a description of these benefits, an enrolled affiliate should consult a Microsoft account manager or us.

**13. Making copies of software.**

*a. Copies necessary for internal deployment.* Each enrolled affiliate may make as many copies of the products licensed under the enrollment you submit on its behalf as necessary to distribute the products to the users within its enterprise. All copies of any product must be true and complete copies (including copyright and trademark notices) and be made from CD-ROMs, disk sets or a network source, acquired from or made available by a Microsoft approved fulfillment source for that product. Each enrolled affiliate may also have a third party make and distribute copies in its place, but the enrolled affiliate is responsible for third-party actions to the same extent it would be if the third party were its employee. You and enrolled affiliates must make reasonable efforts to make employees, agents and other individuals running a product aware that the product is licensed from us and may only be run or transferred subject to the terms of this agreement and the License Agreement/Product Use Rights.

*b. Re-imaging rights.* If an enrolled affiliate or any affiliate included within its enterprise has licensed products from an original equipment manufacturer (OEM), through a retail source or under any Microsoft program other than this Enterprise Agreement program, it may use copies made from the media provided under the enrollment you submit on behalf of the enrolled affiliate in place of any copies made from the media provided through that separate source, so long as it complies with the following restrictions.

(i) The enrolled affiliate must have obtained a separate license from the separate source for each copy being replaced.

(ii) The product, language, version and all components (in the case of product suites, such as Office) of the copies made from the media provided under an enrollment must be identical to the product, language, version and all components of the copies they replace

(iii) In the case of copies licensed from an original equipment manufacturer (OEM) or through a retail source, in addition to the other conditions outlined in this subsection 13(b)(iii), the product type (e.g. upgrade or full license) of the copies made from the media provided under an enrollment must be identical to the product type of the copies they replace. However, an enrolled affiliate may use copies of a desktop operating system made from the media provided under the enrollment you submit on its behalf in place of copies of the same desktop operating system obtained from a separate source, even though they may be of different types (i.e. one may be an upgrade and the other a full license), provided that the product, language and version are identical.

The use of any copies made under this subsection 13(b)(iii) is subject to the terms and use rights provided with or otherwise applicable to the copies being replaced, and nothing in this section creates or extends any warranty or support obligation.

**14. Term, termination and renewal.**

*a. Term.* This agreement will remain in effect unless it is terminated by either party as described below. Each enrollment will have the term provided in that enrollment.

*b. Termination of this agreement.* Either party may terminate this agreement for any reason upon 60 days written notice. This agreement will automatically terminate upon expiration or termination of your government contract, or that portion of the government contract applicable to the licensing of Microsoft products.

**Effect of termination.** Such termination will merely terminate either party's ability to enter into new enrollments under this agreement. Such termination will not affect any enrollment not otherwise terminated, and any terms of this agreement applicable to any enrollment not otherwise terminated will continue in effect with respect to that enrollment.

**c. Termination of an enrollment.** You may terminate an enrollment if the agency terminates for its convenience the government contract to which the enrollment applies. Either party to an enrollment may terminate it if the other party materially breaches its obligations under this agreement, including any obligation to submit orders or pay amounts owed (even if such nonpayment is caused by non-appropriation of funds to an enrolled affiliate). If we terminate an enrollment, we may also terminate this agreement and all other enrollments under it. Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days notice and opportunity to cure. If we give such notice to you, we will give the enrolled affiliate a copy of that notice as well. If an enrolled affiliate ceases to be an affiliate of agency, you must promptly notify us of this fact, and we may terminate the enrollment applicable to it,

**d. Effect of termination or expiration.** Upon expiration or termination of any enrollment, you must order licenses for all copies of products an enrolled affiliate or agency affiliates have run under the enrollment you submit on its behalf for which you have not previously submitted an order. Except as provided in the next paragraph, in the event of termination, all unpaid installments of the purchase price for any licenses will immediately become due and payable, and the enrolled affiliate will be entitled to perpetual licenses only after all such payments have been made.

If (i) you terminate your enrollment as a result of our breach, or (ii) you terminate your enrollment as a direct result of termination of your government contract by agency for its convenience, or (iii) we terminate an enrollment because an agency affiliate ceases to be an affiliate of the enrolled affiliate, or (iv) we terminate an enrollment for non-payment due to non-appropriation of funds to an enrolled affiliate, then you will have the following options. You may immediately pay the total remaining amount due, including all installments, in which case the enrolled affiliate will have perpetual licenses for all copies of the products you have ordered for it. As an alternative, you may pay only amounts due and payable as of the termination date, in which case the enrolled affiliate will have perpetual licenses for (i) all copies of all products for which payment has been made in full, and (ii) the number of copies of products for which payment has been made in installments that is proportional to the amount you have paid as of the termination date.

## **15. Miscellaneous.**

**a. Notices.** All notices, authorizations, and requests given or made in connection with this agreement must be sent by post, express courier, facsimile, or email to the addresses and numbers indicated in the applicable cover page to this agreement. Notices will be deemed delivered on the date shown on the postal return receipt or on the courier, facsimile or email confirmation of delivery.

**b. Severability.** If a court holds any provision of this agreement to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect and the parties will amend this agreement to give effect to the stricken clause to the maximum extent possible.

**c. Waiver.** No waiver of any breach of this agreement shall be a waiver of any other breach, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

**d. Force Majeure.** To the extent that either party's performance is prevented or delayed, either totally or in part, for reasons beyond that party's control, then that party will not be liable, so long as it resumes performance as soon as practicable after the reason preventing or delaying performance no longer exists.

**e. Note on Java Support.** The products may contain support for programs written in Java. Java technology is not fault tolerant and is not designed, manufactured, or intended for use or resale as online control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of Java technology could lead directly to death, personal injury, or severe physical or environmental damage. Sun Microsystems, Inc. has contractually obligated *Microsoft* to make this disclaimer.



*f. Limitation on actions.* Any action arising under this agreement must be brought within two years from the date that the cause of action arose.

*g. Survival.* The License Agreement/Product Use Rights and provisions regarding restrictions on use, evidence of perpetual licenses, transfer of licenses, warranties, limitations of liability, confidentiality, compliance verification and obligations on termination or expiration will survive termination or expiration of this agreement or any enrollment.

#### **16. Additional License Terms**

*a. Transfer Rights.* The Microsoft License/Product Use Rights grants the right of license transfer to another agency of the U.S. Government if the enrollee is an agency of the U.S. Government. The Transfer rights of the PUR are clarified to include the right to transfer among DoD Agencies as well as DoD components within Agencies.

*b. License copies for training, evaluation, research and development (including Research Labs) and back-up.* During the term of the enrollment, each enrolled affiliate and any agency affiliate included in its enterprise may (i) run up to 20 complimentary copies of any additional product in a dedicated training facility on their premises; (ii) run up to 10 complimentary copies of any product that we make available to license as an additional product for a 60 day evaluation period; (iii) run complimentary copies of enterprise products and additional products on 1% of the enrolled affiliates qualified desktops for research and development purposes; and (iv) make and retain one complimentary copy of any licensed product for back-up or archival purposes for each of their distinct geographic locations.

*c. Temporary Use of Software During Times of Conflict.* During Temporary Expeditionary Deployments ("TEDs"), an enrolled affiliate during the term of this agreement may temporarily deploy and install or use on, or access from qualified desktops or servers, the, Standard Desktop Configuration, Enhanced Desktop Configuration, or Enhanced with SQL Desktop Configuration and the additional products, all described in Attachment A (the "Software") on an unlimited number of qualified desktops or servers being used as part of the TEDs ("Temporary Use"). For purposes of this subsection, the term "Temporary Expeditionary Deployments" or "TEDs" shall refer to any number of software licensed products enrolled under this agreement which may be used at no additional cost by the DoD enrolled affiliate. The coverage will extend to deployments away from in-garrison locations (any military post or government office where troops or civilian government personnel are at a permanent location), deployment locations in support of war games, exercises, real world contingencies, and emergency situations similar to the terrorist attacks on 9/11/01 where temporary duty stations were needed due to the destruction of government offices. Each enrolled affiliate will make a record of the count of each category of license used while deployed and the period of use. After the TED and upon request, the count and duration information, but not the deployed location information, will be provided to the contractor for auditing purposes. Such Temporary Use of the software is limited to a period equal to the length of the TED or six (6) calendar months, whichever is shorter ("Temporary Use Period"), unless a different time period is agreed to in writing by us. At the end of the six month period or as mutually agreed to, the DoD enrolled affiliate will provide a written certification that the licenses have either been destroyed or payment has been made under this agreement. The enrolled affiliate agrees to use the products in accordance with the terms contained in this Agreement and the applicable version of the License Agreement - Product Use Rights. If the DoD enrolled affiliate requires use of the Software beyond the Temporary Use Period and such extended use has not been approved by Microsoft, the enrolled affiliate shall purchase the products in accordance with the pricing terms of this Enterprise Agreement.

*d. GFE Non-Portable Computer Use Rights.* DoD has adopted a Teleworking Policy which implements the requirements of Section 359 of Public Law No. 106-346 (reference A), which requires each Executive Agency to establish a policy under which eligible employees of the agency may participate in teleworking to the maximum extent possible without diminished employee performance. Enrolled affiliate shall have the right to grant to those persons participating under the DoD Teleworking Policy and who have been issued a Government Furnished Equipment (GFE) non-portable desktop in lieu of portable computer, the portable use rights under the applicable

License Agreement – Product Use Rights. The portable use rights will apply to such GFE desktop or to a portable computer but not both.

*e. Copies necessary for internal deployment.* Each enrolled affiliate may make as many copies of the products licensed under the enrollment as necessary to distribute the products to the users within its enterprise. All copies of any product must be true and complete copies (including copyright and trademark notices) and be made from CD-ROMs, disk sets or a network source, acquired from or made available by a Microsoft approved fulfillment source for that product. Each enrolled affiliate may also have a third party make and distribute copies in its place, but the enrolled affiliate is responsible for third-party actions to the same extent it would be if the third party were its employee. Enrolled affiliates must make reasonable efforts to make employees, agents and other individuals running a product aware that the product is licensed from Microsoft and may only be run or transferred subject to the terms of this agreement and the License Agreement/Product Use Rights.

*f. Re-imaging rights.* If an enrolled affiliate or any affiliate included within its enterprise has licensed products from an original equipment manufacturer (OEM), through a retail source or under any Microsoft program other than this Enterprise Agreement program, it may use copies made from the media provided under this Enterprise Agreement enrollment in place of any copies made from the media provided through that separate source, so long as it complies with the following restrictions.

(i) The enrolled affiliate must have obtained a separate license from the separate source for each copy being replaced.

(ii) The product, language, version and all components (in the case of product suites, such as Office) of the copies made from the media provided under an enrollment must be identical to the product, language, version and all components of the copies they replace.

(iii) In the case of copies licensed from an original equipment manufacturer (OEM) or through a retail source, in addition to the other conditions outlined in this subsection, the product type (e.g. upgrade or full license) of the copies made from the media provided under an enrollment must be identical to the product type of the copies they replace. However, an enrolled affiliate may use copies of a desktop operating system made from the media provided under the enrollment you submit on its behalf in place of copies of the same desktop operating system obtained from a separate source, even though they may be of different types (i.e. one may be an upgrade and the other a full license), provided that the product, language and version are identical.

The use of any copies made under this subsection is subject to the terms and use rights provided with the copies being replaced, and nothing in this section creates or extends any warranty or support obligation.